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Disenfranchising America's Youth: How Current Voting Laws Are Contrary to the Intent of the Twenty-Sixth Amendment

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Disenfranchising America's Youth: How Current Voting Laws Are Contrary to the Intent of the Twenty-Sixth Amendment

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INTRODUCTION

In 2012, the New Hampshire Legislature passed a new bill that limited the rights of non-resident students from voting in elections within the state. The law changed the definition of domicile and also appeared to require that all voters change their license and car registration to the state within sixty days.¹ The new bill further provided that as of September 2013, student ID cards would no longer be acceptable forms of identification for voting purposes.² Although students across the country expressed outrage over what they believed to be the Republican Party's attempt to target and suppress student voters, these laws were mostly overshadowed by media coverage of voter ID laws and their disproportionate effect on minority citizens.³

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1. See H.R. 1354, 162nd Leg., 2d Sess. (N.H. 2012) (imposing changes to N.H. REV. STAT. ANN. §§ 654:7 and 654:8).

2. *Id.*

3. See, e.g., Charlie Savage & Manny Fernandez, *Court Blocks Texas Voter ID Law*,

Laws attempting to suppress student voters are not a new advent. Since the Twenty-Sixth Amendment lowered the voting age from twenty-one to eighteen in 1971, states have been passing legislation that has challenged, restricted, and continuously narrowed the eligibility of students to vote. The reasoning behind these laws generally focuses on the belief that student voters dilute the power of permanent resident voters, tend to vote in democratic blocks, and are not sufficiently invested in the community.⁴ Regardless of the motivation, these voting laws often have the effect of disenfranchising non-informed students, who either miss the opportunity to vote in their own state or decide not to vote due to the lack of excitement involved in absentee voting.

In *Carrington v. Rash*,⁵ Justice Stewart wrote that the right to vote is “close to the core of our constitution[.]”⁶ Others have observed that “until a person ha[s] the right to vote, she [i]s not a citizen or member of the political community.”⁷ Since the early 1900s, there has been a trend towards a more inclusive society, and the right to vote has been continually expanded. The civil rights movement, eradication of literacy laws, poll taxes, and the enfranchisement of women with the right to vote all demonstrate this trend. The Twenty-Sixth Amendment was one of the more recent steps towards greater inclusivity. However, new state-defined residency and domicile laws have allowed legislators to fence out students from voting in their college towns and, in some cases, totally eradicated their right to vote. Unfortunately, most of these laws are constitutional and thus the court can do very little to protect students, even when the laws are aimed specifically at students.

Despite the fact that these state laws are generally constitutional, they are in clear opposition to the intent of the Twenty-Sixth Amendment. A close examination of the Senate and Congressional Record reveals that the framers of the Twenty-Sixth Amendment were very deliberate and well informed when they chose to lower the voting age to eighteen. These lawmakers saw

Citing *Racial Impact*, N.Y. TIMES (Aug. 30, 2012), <http://www.nytimes.com/2012/08/31/us/court-blocks-tough-voter-id-law-in-texas.html>; Nate Silver, *Measuring the Effects of Voter Identification*, N.Y. TIMES (July 15, 2012, 9:28 AM), <http://fivethirtyeight.blogs.nytimes.com/2012/07/15/measuring-the-effects-of-voter-identification-laws/>; Allan Brawley, *Republicans' Voter Suppression Activities Highlight the Need for Nationwide Reforms*, HUFFINGTON POST (Sept. 26, 2012, 11:06 AM), http://www.huffingtonpost.com/allan-brawley/republicans-voter-suppression-activities_b_1914542.html.

4. Eric S. Fish, *The Twenty-Sixth Amendment Enforcement Power*, 121 YALE L.J. 1168, 1208 (2012).

5. 380 U.S. 89 (1965).

6. *Id.* at 96.

7. Kelly Sarabyn, *The Twenty-Sixth Amendment: Resolving the Federal Circuit Split Over College Students' First Amendment Rights*, 14 TEX. J. ON C.L. & C.R. 27, 52 (2008).

the value that students could add to the political system and how important it was to engage citizens at an early age.

This Note examines the intent of the framers of the Twenty-Sixth Amendment and shows how current state laws directly contradict the Amendment's intent. Section I examines the history and circumstances that led to the passage of the Twenty-Sixth Amendment. Sections II and III examine the supportive testimony and evidence that the House and Senate committees reviewed when considering the proposal for the Twenty-Sixth Amendment and the legislature's true intention when drafting it. Sections IV and V discuss how current voting laws are clearly contrary to the intent of the Amendment and how the logic on which these laws are based is entirely unsubstantiated. Finally, Section VI examines several possible methods that legislators can use to eradicate the current problems.

I. HISTORY: THE RIGHT TO VOTE AND ENFRANCHISING EIGHTEEN- TO TWENTY-YEAR-OLDS

The Supreme Court recognizes the right to vote as a "constitutionally protected right" reserved for "full citizens" of the United States over the age of eighteen.⁸ While the Fourteenth Amendment provides that "[n]o state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States,"⁹ state governments across the country have had a long history of denying many groups—including women, blacks, Indians, Catholics, those under twenty-one years of age, those unable to pay taxes, and illiterates—the right to vote.¹⁰ Throughout the 1900s, as the importance of "political inclusion" grew, Congress passed new amendments¹¹ to limit the power of states to abridge a citizen's right to vote by explicitly expanding protection to race, color, previous servitude, and sex.¹²

Despite the enfranchisement of so many previously excluded groups, the right to vote was still limited through the 1960s to those twenty-one years of age and older.¹³ Although some lawmakers believed that eighteen- to twenty-year olds should be given the right to vote, a dominant attitude seemed to persist that individuals in this age group were not "full citizens"

8. *Id.* at 54. The Fourteenth Amendment, adopted in 1868, defines "citizens" as "all persons born or naturalized in the United States." U.S. CONST. amend. XIV, § 1.

9. Sarabyn, *supra* note 7, at 54.

10. *Id.* at 52.

11. *See, e.g.*, U.S. CONST. amend. XIV, § 1; *id.* amend. XV, § 1; *id.* amend. XIX, § 1; *id.* amend. XXIII, § 1; *id.* amend. XXIV, § 1; *id.* amend. XXVI, § 1.

12. Sarabyn, *supra* note 7, at 54.

13. *Id.* at 51–52.

and were not mature enough to handle the associated responsibility.¹⁴ This viewpoint was further evidenced by the concept of *in loco parentis*, which, through 1954, permitted secondary schools to act as substitute parents for students.¹⁵ School officials, in a parental role, were allowed to command obedience and reform bad habits, despite the fact that many students were legally adults.¹⁶

However, as stated above, not everyone shared the view that young men and women between the ages of eighteen and twenty-one were too immature to handle the responsibilities of full citizenship. In fact, between 1942 and 1970, lawmakers made more than 150 proposals to lower the voting age to eighteen years of age.¹⁷ Unfortunately, all new constitutional amendments require, per Article V of the Constitution, a two-thirds majority vote in both Houses to pass.¹⁸ Despite several close votes, Congress struggled to gain enough support to pass a constitutional amendment.¹⁹

In 1970, Congress decided to circumvent the majority needed to pass an amendment and instead lower the voting age through statute, which required only a simple majority.²⁰ Through a bill extending and amending the Voting Rights Act of 1965 ("VRA"), Congress lowered the voting age to eighteen in federal, state, and local elections.²¹ States responded immediately, claiming that the VRA took away powers reserved to them by the Constitution—namely, the right to control their own elections.²² The Supreme Court promptly tackled the issue in the 1970 case of *Oregon v. Mitchell*. In *Mitchell*, the Court acknowledged that Congress did have certain powers to control elections under the Necessary and Proper Clause.²³ However, the Court also acknowledged that the states had the ability to control "the times, places, and manner of holding elections for Senators and Representatives."²⁴ In the end, the Court found that Congress could lower the voting age to eighteen for federal elections, but the VRA was unconstitutional and unenforceable as it pertained to state and local elections.²⁵

14. *Id.* at 52; S. REP. NO. 92-26, at 8 (1971).

15. See Sarabyn, *supra* note 7, at 49–50, 52 (discussing the U.S. Supreme Court's ruling in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), which curtailed the ability of grade schools to act *in loco parentis*).

16. *Id.* at 49–50.

17. S. REP. NO. 92-26, *supra* note 14, at 8.

18. U.S. CONST. art. V.

19. S. REP. NO. 92-26, *supra* note 14, at 8 (providing that the 1954 amendment failed by only five votes).

20. *Id.*

21. 42 U.S.C. § 1973bb-2 (1970) (repealed 1975).

22. See, e.g., *Oregon v. Mitchell*, 400 U.S. 112, 117 (1970).

23. *Id.* at 120–21.

24. *Id.* at 120.

25. *Id.* at 118.

Although the holding in *Mitchell* struck down a portion of the amended VRA, it actually paved the way for the Twenty-Sixth Amendment by creating the need for each state to have two separate sets of ballots: one for eighteen- to twenty-year-olds for federal elections and one for every person twenty-one and older for federal, state, and local elections.²⁶ The cost and administrative oversight necessary to maintain a two-ballot system—approximated by a fifty-state survey to be somewhere between \$10 and \$20 million—proved to be prohibitive and overly burdensome to the states.²⁷ Additionally, there was serious concern that segregating voters into two classes would cause unnecessary “confusion, delay, and danger of fraud.”²⁸ These factors, coupled with the “moral argument” that there was “no basis in policy or in logic for denying these citizens the right to vote in State and local elections when they may vote in Federal elections[,]”²⁹ helped to make the Twenty-Sixth Amendment the “most quickly ratified amendment in American history.”³⁰ The 1971 amendment, passed by the 92nd Congress, provided that, “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”³¹ It codified the shift from viewing eighteen- to twenty-year-olds as children and, instead, as full citizens and participants in the political process.³²

II. SUPPORT FOR LOWERING THE VOTING AGE: AN EXAMINATION OF THE HOUSE AND SENATE RECORDS

Given the 150 proposals that were made to lower the voting age in the years leading up to the ratification of the Twenty-Sixth Amendment, it is no surprise that the House and Senate Records contain a significant amount of persuasive testimony, briefs, and data to support the change.³³ Throughout both the House and Senate records, several key themes—education, cultural responsibilities, morality, and radicalization—were repeated, all of which supported the proposition of lowering the voting age and demonstrated the framers’ appreciation for the significant value that this group could add to the American political system.³⁴

26. S. REP. NO. 92-26, *supra* note 14, at 15.

27. *Id.* at 14–15.

28. *Id.* at 12–13.

29. *Id.* at 12.

30. Fish, *supra* note 4, at 1194–95.

31. U.S. CONST. amend. XXVI, § 1.

32. Sarabyn, *supra* note 7, at 52.

33. See generally H.R. REP. NO. 92-37 (1971); S. REP. NO. 92-26, *supra* note 14.

34. See generally H.R. REP. NO. 92-37, *supra* note 33; S. REP. NO. 92-26, *supra* note 14.

The House Record emphasized the knowledge and education of America's youth.³⁵ During testimony before the Committee, the Cox Commission described the "present generation" as "'the most intelligent,' the 'most idealistic,' the 'most sensitive to public issues,' and with a 'higher level of social conscience than preceding generations.'"³⁶ President Richard Nixon shared this sentiment, explaining that, "The reason the voting age should be lowered is not that 18-year-olds are old enough to fight—it is because they are smart enough to vote. They are more socially conscious, more politically aware, and much better educated than their parents were at age 18."³⁷ Senator Edward Kennedy, an adamant supporter of both the VRA and the Twenty-Sixth Amendment, offered statistical support:

In 1920, just fifty years ago, only 17% of Americans between the ages of 18 and 21 were high school graduates. Only 8% went on to college. . . . Today, by contrast, 79% of Americans in this age group are high school graduates. 47% go on to college.³⁸

And as Dr. Margaret Mead, a noted anthropologist, noted in her testimony, the young people in question were "not only the best educated generation that we have ever had, and the segment of the population that is better educated than any other group, but also they are more mature than young people in the past."³⁹

In addition to possessing greater education and maturity, the Subcommittee also felt that eighteen- to twenty-year-olds had "earned the right to vote because they bear all or most of an adult citizen's responsibilities."⁴⁰ A representative of the National Commission of Causes and Prevention of Violence pointed out that it is at eighteen that young people traditionally "try it on their own," and "become responsible for themselves and others."⁴¹ These statements were supported by statistics, which demonstrated that most were "full time employees and taxpayers[,] . . . about half [were] married and more than 1 million of them [were] responsible for raising families[,] [n]early 1 million [were] serving their country in the Armed Forces[,] and tens of thousands of [them] . . . ha[d]

35. See generally H.R. REP. NO. 92-37, *supra* note 33.

36. S. REP. NO. 92-26, *supra* note 14, at 3.

37. Fish, *supra* note 4, at 1186 n.82.

38. *Id.* at 1186 n.81 (omission in original).

39. S. REP. NO. 92-26, *supra* note 14, at 4.

40. *Id.* at 6.

41. *Id.* at 3.

paid the supreme sacrifice in the Indochina War”⁴² The Subcommittee further acknowledged that in the eyes of the law, these individuals were adults. They could execute wills, sign contracts, and would be tried as adults in criminal actions.⁴³

Another topic that ran through the House and Senate records was the moral issue involved in denying eighteen- to twenty-year-olds the right to vote. In 1942, the draft age was lowered to eighteen, and in 1955, the Vietnam War exploded.⁴⁴ American citizens expressed outrage that young soldiers were old enough to fight and die for their country but not old enough to vote.⁴⁵ The Subcommittee could find no justification for requiring the voting age to be set at twenty-one.⁴⁶ In fact, the House Committee broached this topic in its studies and found that the connection between adulthood and the age of twenty-one was based on an eleventh century tradition that reflected when “most males were physically capable of carrying armor.”⁴⁷ Therefore, there was no strong support for the twenty-one year threshold in the 1970s or today. As one witness observed, “The age of 21 is not simply the automatic chronological door to the sound judgment and wisdom that is needed to exercise the franchise of the ballot.”⁴⁸

Another key motivation to lower the voting age was to prevent violence. The 1960s saw an “explosion of youth involvement in politics,” which in turn led to some violent protests.⁴⁹ “[T]he civil rights movement drew political attention to the issue of voting rights and provided advocates of a lower voting age with a morally powerful analogy.”⁵⁰ As many lawmakers expressed, it would be impermissible “for our nation to ignore the legitimate needs and desires of the young. . . . We have seen the dedication and conviction they brought to the Civil Rights movement and the skill and enthusiasm they have infused into the political process, even though they lack the vote.”⁵¹ As the court stated in *Worden v. Mercer County Board of Elections*,⁵² “Political activism on college campuses had become commonplace, [and] youthful independence had become even more commonplace”⁵³ Ultimately, the legislators felt that, in addition to this

42. *Id.* at 6.

43. *Id.*

44. Fish, *supra* note 4, at 1185.

45. *Id.* at 1184 n.77.

46. S. REP. NO. 92-26, *supra* note 14, at 3.

47. *Id.* at 5.

48. *Id.* at 3.

49. Fish, *supra* note 4, at 1185–86.

50. *Id.*

51. S. REP. NO. 92-26, *supra* note 14, at 7.

52. 294 A.2d 233 (N.J. Sup. Ct. 1972).

53. *Id.* at 243.

group's ability to handle the responsibility of voting, incorporating them into "the political process [was necessary] to prevent radicalization."⁵⁴

In sum, the Committee members recognized that youth culture in America had been significantly altered. Members of this age group were mature enough in every way to exercise the franchise, had earned the right to vote by bearing the responsibilities of citizenship, and, as discussed in further detail below,⁵⁵ could add significant value to society. As the Committee concluded, "[T]he time has come to lower the voting age to 18 in every election across the land—because it is right. Lowering the voting age is sound principle, sound policy, and sound practice."⁵⁶

III. INTENT OF THE TWENTY-SIXTH AMENDMENT

Upon close examination of the legislative materials, the true intent of the Twenty-Sixth Amendment becomes clear. The intent was not merely to enfranchise eighteen- to twenty-year-olds. The legislature intended, too, to engage the fresh perspective and enthusiasm of this population in the political process, encourage them to take an active role in the creation of their future through political participation, and to increase overall voter participation by encouraging life-long participation in the American political system from young age. The *Worden* court offered a succinct summation: "The goal was not merely to empower voting by our youths but was affirmatively to encourage their voting, through the elimination of unnecessary burdens and barriers, so that their vigor and idealism could be brought within rather than remain outside lawfully constituted institutions."⁵⁷

The Senate Report is replete with quotes from politicians and other witnesses that press upon the importance of the youth population. Senator Randolph suggested that, "allowing participation by the younger voters would have the beneficial result of forcing us all to take a 'fresh look' at our political system."⁵⁸ Another witness opined that at eighteen-year-olds, young people have a "fresher knowledge and a more enthusiastic interest in government processes [than their younger counterparts]."⁵⁹ As the Committee observed, "The deep commitment of those 18 to 21 years old . . . 'is exactly what we need more of in the country[,] . . . more citizens who are concerned enough to pose high social and moral goals for the nation.'"⁶⁰

54. Fish, *supra* note 4, at 1186.

55. See discussion *infra* Part III.

56. S. REP. NO. 92-26, *supra* note 14, at 18.

57. 294 A.2d at 243.

58. S. REP. NO. 92-26, *supra* note 14, at 3.

59. *Id.*

60. *Id.* at 6.

The drafters of the Twenty-Sixth Amendment wanted eighteen- to twenty-year-olds to have the power to affect their future. As one Senator stated in the Senate Report, "The future in large part belongs to young people. It is imperative that they have the opportunity to help set the course of that future."⁶¹ Senator Kennedy also felt that lowering the voting age would enable "young Americans to improve their social and political circumstances."⁶² The *Worden* court recognized that "youthful independence had become even more commonplace."⁶³ Therefore, this change in societal norms meant that eighteen- to twenty-year-olds should be empowered with the right to decide and control their futures.

Politicians also recognized that in the 1960s and early 1970s, voter engagement was "poor" in the United States compared to other countries, especially in the twenty-one- to forty-year-old category.⁶⁴ Statistics indicated that in 1968, the last presidential election prior to the passage of the Twenty-Sixth Amendment, only 60.84 percent of eligible Americans voted.⁶⁵ The Senate Report noted that the youth population was more likely to vote because they were still enthused from educational courses in "citizenship and American History."⁶⁶ Enfranchising eighteen- to twenty-year-olds would have the immediate effect of increasing voter engagement, but the legislators also hoped that engaging voters at a young age would lead to more lifetime involvement in the political process.⁶⁷

Overall, the legislators realized that eighteen- to twenty-year-olds could add significant value to society "by bringing the force of their idealism, concern, and energy into the constructive mechanism of elective government."⁶⁸ As Senator Edward M. Kennedy testified:

I believe the time has come to lower the voting age in the United States, and thereby to bring American youth into the mainstream of our political process. To me, this is the most important single principle we can pursue as a nation if we are to succeed in bringing our youth into full and lasting participation in our institutions of democratic government.⁶⁹

61. *Id.* at 3.

62. Fish, *supra* note 4, at 1187–88.

63. 294 A.2d at 243.

64. S. REP. NO. 92-26, *supra* note 14, at 3.

65. John Woolley & Gerhard Peters, *Voter Turnout in Presidential Elections: 1828-2008*, AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/data/turnout.php> (last visited Mar. 30, 2014).

66. S. REP. NO. 92-26, *supra* note 14, at 3.

67. *Id.*

68. *Id.* at 7.

69. *Id.* at 4.

IV. THE CONSTITUTIONAL CONUNDRUM: HOW THE CURRENT STUDENT
VOTING LAWS ARE CONTRARY TO THE INTENT OF THE
TWENTY-SIXTH AMENDMENT

Although federal lawmakers recognized the value that student voters could add to the political process, state lawmakers have not historically reciprocated this sentiment. Since the ratification of the Twenty-Sixth Amendment, state lawmakers have been creating laws that confuse young voters and directly deter them from exercising their right to vote. As justification, these states cite *Dyer v. Huff*,⁷⁰ which held that although the Twenty-Sixth Amendment guarantees eighteen- to twenty-year-old citizens the right to vote, it does not necessarily guarantee that they may vote wherever they desire.⁷¹

The Twenty-Sixth Amendment enfranchises eighteen- to twenty-year-olds with the right to vote, and the Fourteenth Amendment provides that those born in the United States “are citizens” of the “state wherein they reside.”⁷² Furthermore, courts have found that states may create laws to ensure that all voters are “bona fide residents” of the state or municipality in which they intend to vote.⁷³ However, no constitutional amendment or federal statute actually defines residency as it pertains to state citizenship.⁷⁴ States have used this ambiguity to create laws that distinguish between domiciliaries and residents, essentially fencing out student voters under the guise of ensuring that all voters are “bona fide residents.”⁷⁵ The Supreme Court has further “clouded the question of whether states retain definitional power in this area by issuing dicta that appear to endorse the ongoing legitimacy of such state statutes.”⁷⁶

States have used the flexibility and the lack of clarity on what being a state resident means to create laws that limit or eliminate the rights of students to vote.⁷⁷ Maine’s voting laws provide a prime example for discussion.⁷⁸ Unlike other states, Maine does not differentiate between

70. 382 F.Supp 1313 (D.S.C. 1973).

71. *Id.* at 1316.

72. U.S. CONST. amend. XIV, § 1; *id.* amend. XXVI, § 1.

73. *Ramey v. Rockefeller*, 348 F.Supp 780, 786 (E.D.N.Y. 1972).

74. *Id.*

75. *NASS Survey: Review of State Laws Defining Residency for Voting*, NAT’L ASSOC. OF SECRETARIES OF STATE (Oct. 2008), http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=450.

76. John M. Greabe, *A Federal Baseline for the Right to Vote*, 112 COLUM. L. REV. SIDEBAR 62, 63 (2012).

77. Fish, *supra* note 4, at 1208–09.

78. *See* ME. REV. STAT. tit. 21-A, § 112(1) (2009).

residency for voting purposes and residency for all other legal purposes.⁷⁹ Only those who maintain a legal residence—a “place where the person has established a fixed and principal home to which the person, whenever temporarily absent, intends to return”—can register to vote in its elections.⁸⁰ Additionally, the law even expressly states how attending a college affects these rights: “A person does not gain or lose a residence solely because of the person’s presence or absence . . . while a student in any institution of learning.”⁸¹ Therefore, if an individual registers to vote, he or she is making a declaration of residency and is, therefore, required to abide by all other requirements of residency, including obtaining a Maine driver’s license within ninety days.⁸² Maine’s law does not seem unreasonable, except that the true intent of the law seems to be to target and fence out student residents. This assumption of intent is based not only on the specific reference in the law to how attending college affects residency status, but also on actions undertaken by Secretary of State, Charles Summers.⁸³ In 2011, Summers sent a “threatening letter to hundreds of college students who were legally registered to vote in Maine, floating the possibility of election law violation and encouraging them to re-register elsewhere.”⁸⁴ Many students became “scared and freaked out” and “shaken up” about their “illegal” actions and cancelled their voter registrations in fear of prosecution.⁸⁵ There is no indication that Summers sent warning letters to anyone but the state’s students.

These new voting laws, like that in Maine, create two principal problems in direct contradiction to the intent of the framers of the Twenty-Sixth Amendment. The first issue is that each state is generating its own voting laws, creating its own definitions of residency, or changing identification requirements.⁸⁶ With the new changes and great variation from state to state, a significant amount of confusion results amongst both those trying to vote and those charged with enforcing the laws.⁸⁷ Election officials and poll

79. *Id.*

80. *Id.*

81. *Id.*

82. *Maine Voting Residence Fact Sheet*, DEP’T OF THE SEC’Y OF STATE, BUREAU OF CORPS., ELECTIONS, AND COMM’NS, <http://maine.gov/sos/cec/elec/resident.htm> (last visited Mar. 30, 2014).

83. ME. REV. STAT. tit. 21-A, § 112(1); Scott Keyes, *Maine Elections Chief Uses GOP List to Intimidate Student Voters and Encourage Them to Re-Register in Another State*, THINK PROGRESS (Sept. 29, 2011, 5:10 PM), <http://thinkprogress.org/justice/2011/09/29/331788/maine-student-voter-intimidation/>.

84. Keyes, *supra* note 83.

85. *Id.*

86. Greabe, *supra* note 76, at 72.

87. *Id.*

volunteers, who are themselves confused about the law, often give out incorrect or misleading information. Although not intentional, this “incorrect and misleading information . . . is no less damaging to the franchise than intentional maliciousness.”⁸⁸ For example, in the 2000 election, Maine voting officials told students that they risked losing “their financial aid, healthcare, driver’s license, and/or car registration” if they attempted to register in the state.⁸⁹ Other students were turned away from polls after officials asked “illegal questions” regarding their residency status.⁹⁰ Hundreds of miles away in Texas, a voting registrar refused to register voters who provided an out-of-state address as their “mailing address” but never informed them of this fact.⁹¹ When the students showed up to vote on Election Day, they were too late to re-register either in their home state or in Texas.⁹² In both cases, the election officials may not have intended to be malicious, but the effect that their actions had on student voters who wanted to exercise their constitutional right to vote was profoundly damaging.

Lawmakers passed the Twenty-Sixth Amendment, in part, because they foresaw the “confusion, delay, and danger of fraud” that the dual balloting system necessitated by the *Mitchell* holding could cause.⁹³ However, as states create new laws that affect students’ voting rights, the potential confusion that the framers foreshadowed is being brought to bear in a whole new way.⁹⁴ Not only are many poll and voting officials providing incorrect information to voters, but some voters are simply choosing to abstain from voting altogether because they do not understand their own rights. A recent San Francisco State University poll found that 17.8 percent of students did not vote due, at least in part, to registration problems.⁹⁵ Recent changes to voting laws, and the variation of laws from state to state, have “heightened the level of confusion” for anyone trying to understand and exercise their voting rights.⁹⁶ Student voters are uniquely vulnerable to these changes and the resulting confusion because they are new to the voting system and bring

88. Elizabeth Aloï, *Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting*, 18 NAT’L BLACK L.J. 283, 289 (2004).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. S. REP. NO. 92-26, *supra* note 14, at 12.

94. Dan Froomkin, *Voter ID Laws Take Aim at College-Student Voters*, HUFFINGTON POST (Sept. 22, 2012, 10:16 AM), http://www.huffingtonpost.com/2012/09/22/voter-id-laws-gop-college-student_n_1791568.html.

95. MARSHA NYE ADLER, SFSU VOTES 2002: A REPORT ON STUDENT VOTING IN THE 2002 GENERAL ELECTION 5 (2003).

96. *Id.*

only a limited understanding of the voting process and their rights into the voting booth.⁹⁷

The primary issue with the new voting laws, however, is not simply the disenfranchisement of students through confusion. Rather, it is the fact that these changes to the voting laws are intentionally aimed at excluding students from the voting pool, especially in areas where they have been very active. As discussed above, Maine's Secretary of State sent letters to students threatening legal action if they continued to vote within the state and encouraging them to vote elsewhere.⁹⁸ In Wisconsin, which had one of the highest young voter turnouts in the nation in 2004 and 2008, the legislature recently passed a law that invalidated the use of college ID cards in voter registration, making it more difficult for students to register to vote.⁹⁹ Tennessee took a similar action, changing the law to prohibit the use of student college IDs for voting purposes, but allowing faculty members to continue to use their college IDs for voting identification purposes.¹⁰⁰ Tennessee justified its decision by claiming, without any statistical evidence, that students frequently forge IDs to lie about their age.¹⁰¹

The intention of lawmakers is not merely inferential based on the circumstances surrounding new laws or because of the results that ensue. Many lawmakers have made clear statements that the goal of these new voting laws is to fence out student voters from their local communities. In 2012, New Hampshire made changes to its voting laws requiring a greater physical presence and intent to remain that was not present in the prior law, as well as inferring that registrants would also be considered residents for other purposes, including motor vehicle laws.¹⁰² In a news conference relating to the bill, New Hampshire House Speaker William O'Brien remarked that the state's college towns had "lost the ability to govern themselves" because college students were "doing what I did when I was a kid and foolish, voting as a liberal. . . . That's what kids do. They don't have life experience and they just vote their feelings."¹⁰³ State Representative Gregory Sorg, the sponsor of the bill, expressed a similar sentiment:

97. *Id.*

98. Keyes, *supra* note 83.

99. Editorial, *Keeping Students from the Polls*, N.Y. TIMES (Dec. 27, 2011), http://www.nytimes.com/2011/12/27/opinion/keeping-college-students-from-the-polls.html?_r=0 [hereinafter *Keeping Students from the Polls*].

100. Froomkin, *supra* note 94.

101. *Id.*

102. N.H. REV. STAT. ANN. § 654:7 (2012).

103. N.H. Democratic Party, *O'Brien Wants to Limit Voting Rights*, YOUTUBE (Jan. 14, 2011), <http://www.youtube.com/watch?v=zHLkeEoaMQI>.

Average taxpayers in college towns . . . are having their votes diluted or entirely canceled by those of a huge, largely monolithic demographic group . . . composed of people with a dearth of experience and a plethora of the easy self-confidence that only ignorance and inexperience can produce. . . . Their youthful idealism . . . is focused on remaking the world, with themselves in charge, of course, rather than with the mundane humdrum of local government.¹⁰⁴

Although the New Hampshire law is currently being challenged,¹⁰⁵ it is unclear, even with comments like those made by O'Brien and Sorg, if the student challenge to the law will be successful. The Supreme Court has previously held that states cannot treat students differently from other voters,¹⁰⁶ and that it is constitutionally impermissible for states to "fenc[e] out" certain populations because of the "way they may vote."¹⁰⁷ However, in response to comments similar to those of O'Brien and Sorg indicating a specific intent to fence out students, the court in *Levy v. Scranton*¹⁰⁸ found that the comments of some legislators "does not lead to the inevitable conclusion that this subjective intent was a motivating factor on the part of the entire legislature to enact [the] bill."¹⁰⁹ The court held that since the new voting law at issue was "enacted, at least in part, for the constitutionally permissible purpose of providing guidelines for determining bona fide residency[.]" the comments showing an intent to target and eliminate student voters was not enough to invalidate the law.¹¹⁰

In addition to state lawmakers choosing to ignore the Twenty-Sixth Amendment's intent to create greater exclusivity, a similar sentiment seems to be present in the courts as well. Upon reviewing more recent cases, it appears that those ruled on shortly after the enactment of the Twenty-Sixth Amendment and its predecessor, the VRA, were more willing to look to the

104. Peter Wallsten, *In States, Parties Clash Over Voting Laws That Would Affect College Students, Others*, WASH. POST (Mar. 8, 2011, 10:41 AM), http://www.washingtonpost.com/wp-dyn/content/article/2011/03/06/AR2011030602662_3.html?tid=nn_twitter&sid=ST2011031002881.

105. *Rivers v. New Hampshire*, No. 2012-0680 (N.H. Super. Ct. filed Sept. 28, 2012). The Superior Court of New Hampshire granted preliminary injunctive relief to prevent the new law from taking effect prior to the 2012 presidential election. *See Rivers v. New Hampshire*, No. 219-2012-CV-00458 (N.H. Super. Ct. Sept. 29, 2012), at 8.

106. *See Symm v. United States*, 439 U.S. 1105, 1107, 1110 (1979).

107. *Carrington*, 380 U.S. at 94.

108. 780 F.Supp. 897 (N.D.N.Y. 1991).

109. *Id.* at 901.

110. *Id.* at 902.

intent of the Twenty-Sixth Amendment when determining the validity of a law.¹¹¹ In *Worden*, for example, several college students challenged local voter registration officials who refused to allow them to register to vote in the state of New Jersey.¹¹² The state claimed that the new law was necessary to prevent voter fraud, but the court found no evidence that the current laws were insufficient to accomplish this purpose.¹¹³ Although New Jersey courts had previously ruled that students were considered “as residing at their original homes” even if they were living elsewhere, the court decided that this was no longer relevant due to societal changes.¹¹⁴ Society was more mobile than ever and it was no longer the case that college students led a “semicloistered life with little or no interest in noncollege community affairs and with the intent of returning, on graduation, to his parents' home and way of living.”¹¹⁵ The New Jersey Supreme Court struck down the law, finding that “forcing young voters to undertake special burdens” would dissuade them from voting, which is inconsistent with the underlying purpose of the Voting Rights Act “to encourage political participation.”¹¹⁶

State laws, even when they place special burdens on students, are generally still held to be constitutional as long as the state provides a legitimate basis for the law in accordance with *Symm*.¹¹⁷ However, many legislators are ignoring the opportunity that the framers of the Twenty-Sixth Amendment recognized. The Committee members that created the Twenty-Sixth Amendment believed that the excitement of eighteen- to twenty-year-olds would foster a lifelong engagement in the political process at a time when voter turnout rates were historically low and would allow lawmakers to take a fresh look at the system.¹¹⁸ Instead, as the Editorial Board of the *New York Times* stated in a 2011 article, “Imposing these restrictions to win an election will embitter a generation of students in its first encounter with the machinery of democracy.”¹¹⁹ States and courts should refer back to the Twenty-Sixth Amendment and remember the intent, the purpose, and the opportunities envisioned by the framers.

111. See, e.g., *City of Memphis v. Hargett*, No. M2012-02141-COA-R3CV, 2012 WL 5265006 (Tenn. Ct. App. Oct. 25, 2012), *aff'd*, 414 S.W.3d 88 (Tenn. 2013).

112. 294 A.2d at 234.

113. *Id.* at 244.

114. *Id.* at 236.

115. *Id.*

116. *Id.* at 233–34.

117. 439 U.S. at 1107, 1110.

118. S. REP. NO. 92-26, *supra* note 14, at 3.

119. *Keeping Students from the Polls*, *supra* note 99.

V. DISENFRANCHISING BASED ON UNSUBSTANTIATED ASSUMPTIONS

In examining the cases brought by students against the states and the arguments contained therein, the justifications asserted by state lawmakers to support restrictive voting laws tend to lack merit. For instance, many state lawmakers claim the need to verify that all voters are bona fide citizens and to protect the state from voter fraud. However, there is little factual basis for either of these propositions. Additionally, underlying these asserted justifications are other rationales predicated on the belief that students will vote irrationally, lack long-term perspective, vote solely democratically, and lack the maturity and education to vote. However, all of these rationales have been previously considered and rejected by the court or by the framers of the Twenty-Sixth Amendment.

States generally claim prevention of voter fraud or ensuring that voters are bona fide citizens as legal justification for student voting restrictions.¹²⁰ In *Walgren v. Howes*,¹²¹ the New Jersey Supreme held that if a state law “disproportionately affects the voting rights of citizens specially protected by a constitutional amendment, the burden must shift to the governmental unit to show how the statutory scheme effectuates, in the least drastic way, some compelling governmental objective.”¹²² One of the most commonly claimed “governmental objective[s]” is the prevention of fraud.¹²³ That was the claim used, successfully, in Tennessee to defend its law that prohibited the use of college IDs for student voter registration purposes but allowed them for faculty voting purposes.¹²⁴ New Hampshire also used that claim in defense of the changes to its voting laws.¹²⁵ However, there has been no proof that voter fraud is an uncontrolled epidemic. In fact, George W. Bush’s Justice Department spent five years searching for voter fraud from 2002 to 2007, but found “virtually no evidence of any organized effort to skew federal elections.”¹²⁶ Instead, journalists and politicians have claimed that “voter fraud is an invented enemy . . . employed to pass politically advantageous laws in anticipation of the presidential election.”¹²⁷

120. See, e.g., *Levy*, 780 F.Supp. 897 at 901.

121. 482 F.2d 95 (1st Cir. 1973).

122. *Id.* at 102.

123. See, e.g., *id.*

124. Froomkin, *supra* note 94.

125. Trymaine Lee, *In New Hampshire, Rumored Voter ID Laws Confuse Electorate*, HUFFINGTON POST (Jan. 9, 2012, 10:35 PM), http://www.huffingtonpost.com/2012/01/09/new-hampshire-voter-id-laws_n_1194784.html.

126. Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES (Apr. 12, 2007), http://www.nytimes.com/2007/04/12/washington/12fraud.html?_r=0.

127. Jake Heller, *GOP-Backed Voter Fraud Laws Aim to Disenfranchise Students*, THE DAILY BEAST, (Sept. 3, 2012, 10:00 PM), <http://www.thedailybeast.com/articles/2012/09/03/>

In reading between the lines and considering the candid remarks of outspoken legislators, it is clear that the true motivation behind the new laws is based on the following assumptions: (1) students lack the knowledge and long-term orientation to be effective constituents; (2) students are too democratic and their votes do not reflect the population as a whole; and (3) students lack the maturity and experience to make important political decisions. However, most of these arguments were already addressed and dismissed during the committee hearings or have been argued and rejected in courts across the country.¹²⁸ The House and Senate Reports and case history, in conjunction with current research and statistical data, indicate that these assumptions are generally unfounded and lead to unwarranted bias against the student population.

Legislators and “permanent” residents often express concern over the consequences that could result from allowing students to vote in their community. One fear, as expressed in *Ramey v. Rockefeller*, is that students, unlike permanent residents, cannot appreciate the long-term consequences of potentially short-term solutions or changes.¹²⁹ In *Ramey*, the state of New York argued that the restrictive voting laws it had created were necessary to “insure that all voters have a true feeling of responsibility for the acts of their elected officials. The laws passed and the acts taken by those officials have a permanency far beyond the limited period that the student is at the college.”¹³⁰ The court agreed that without any intention “to remain ‘permanently’ or ‘indefinitely,’” a voter’s choices could be “distorted in accord with the limited nature of his interest.”¹³¹ In an “increasingly mobile society,” however, the court concluded:

[I]t would be the rare citizen who could swear honestly that he intended to reside at his present address permanently; even if the test of indefinite intention is different, there would undoubtedly be many citizens with ‘definite’ hopes of moving to better job opportunities, more pleasant climates, and the like.¹³²

For many students, their college town is where they feel most politically engaged. College is where students typically spend their first four years after becoming an adult in the eyes of the law. Although many students may not

[gop-backed-voter-fraud-laws-aim-to-disenfranchise-students.html](#).

128. See generally S. REP. NO. 92-26, *supra* note 14, at 3.

129. *Ramey*, 348 F. Supp. at 788.

130. *Id.* at 787.

131. *Id.* at 788.

132. *Id.*

know their exact plans for the future, most indicate that they do not intend to return to their parents' homes upon graduation. In the past, college was viewed as "simply the interlude till the customary return home," but this viewpoint was dismissed in 1972 as an "ancient concept."¹³³ Furthermore, in *Bright v. Baesler*,¹³⁴ the court pointed out that if students intended to return "home" when they finished college, then they would most likely not want to vote in their college towns and instead would want to "preserve their right to vote at [their home] location."¹³⁵ In short, not allowing students to vote where they have made their first adult home and feel most politically engaged is not only contrary to the intent of the Twenty-Sixth Amendment, but also "unfairly discriminates against them."¹³⁶

Although states are fixated on the notion that without the intent to permanently reside, students cannot be responsible citizens, courts have ruled in the contrary. In *Worden*, the court pointed out that students "are no more mobile than the general population, which has admittedly become quite restless, and they are no more transient than many other groups whose right to vote in communities where they are short-term residents is never questioned."¹³⁷ Many states have even expanded residency laws to include non-traditional residencies including shelters, parks, or even underpasses.¹³⁸ If states would like to be more inclusive by allowing these non-traditional residences, it seems counter-intuitive that a dormitory where some students have committed to live for four years is less acceptable and less permanent than a highway underpass in which an individual has no financial commitment. As the court stated in *Jolicoeur v. Mihaly*¹³⁹:

Fears of the way minors may vote or of their impermanency in the community may not be used to justify special presumptions—conclusive or otherwise—that they are not bona fide residents of the community in which they live. . . . [T]he middleaged person who obtains a job and moves . . . and the youth who moves . . . to attend college must be treated equally . . . [and] may not be questioned on account of age or occupational status.¹⁴⁰

133. *Worden*, 294 A.2d at 243.

134. 336 F. Supp. 527 (E.D. Ky. 1971).

135. *Id.* at 533.

136. *Id.*

137. *Worden*, 294 A.2d at 244–45.

138. See, e.g., ME. REV. STAT. tit. 21-A, § 112 (stating that "a person's residency is not subject to challenge on the sole basis that the person has a nontraditional residence").

139. 488 P.2d 1 (Cal. 1971).

140. *Id.* at 4, 12.

In *Newburger v. Peterson*,¹⁴¹ the court rejected New Hampshire's argument that students should not be allowed to vote in order to ensure "a more intelligent vote" with those that have "a commitment to the community and a stake in the outcome of local elections."¹⁴² The District Court stated that it is "impossible for us to see how such people would possess any greater knowledge, intelligence, commitment, or responsibility than those with more precise time schedules."¹⁴³ Ultimately, the court concluded that New Hampshire's "indefinite intention requirement [was] too crude a blunderbuss to pass muster."¹⁴⁴

In *Ramey*, the court also concluded that there is no proof that students are an "unconcerned body of men in control . . . through the ballot box" and have no interest in municipal affairs.¹⁴⁵ Even though many students may intend to leave their college towns or states after graduation, many have a "strong sense of community involvement while attending school."¹⁴⁶ Like all other state citizens, students are expected to "obey all local laws and ordinances and to submit to the governance of the duly elected local officials and it is understandable why they seek a voice in the community they regard as their own."¹⁴⁷ They are required to pay sales, gas, and other applicable taxes and are regarded by the Census Bureau as residents of the community for "legislative apportionment and the allocation of federal funds."¹⁴⁸ Therefore, students should be empowered with the right to elect the individuals who will represent them: "If they physically live in [their college town], are interested in the community, are anxious to vote there and nowhere else, and intend it as their legal residence, then there is no justifiable reason why they should not be allowed to vote."¹⁴⁹ "Simply put[,], there are no salient reasons to treat registering students differently from other people merely because they are students."¹⁵⁰ Prohibiting students from voting in their college town essentially displaces these individuals to another town, where they may feel less politically engaged.

States often argue that students lack the maturity or intelligence necessary to make political decisions.¹⁵¹ However, this is the very issue that the Committees addressed in the House and Senate records when creating the

141. 344 F.Supp 559 (D.N.H. 1972).

142. *Id.* at 562.

143. *Id.* at 563.

144. *Id.* at 562–63.

145. *Ramey*, 348 F. Supp. at 787.

146. *Worden*, 294 A.2d at 241.

147. *Sloane v. Smith*, 351 F.Supp. 1299, 1304 (M.D. Pa. 1972).

148. *Worden*, 294 A.2d at 241.

149. *Sloane*, 351 F. Supp. at 1304.

150. *Bright*, 336 F. Supp. at 533.

151. *See, e.g.*, N.H. Democratic Party, *supra* note 103.

Twenty-Sixth Amendment. In the early 1970s, the legislature found that the significantly greater amount of eighteen- to twenty-year-olds graduating from high school and college showed that they possessed the education necessary to participate in the political process.¹⁵² The Committee also found that these young adults were sufficiently mature because they were required to bear all the other requirements of citizenship and adulthood.¹⁵³ Today, the statistics show that more young adults have gone on to higher education than ever before. According to the National Center for Education Statistics, in 1971, 26.2 percent of all students and 33.2 percent of all high school graduates from the ages of eighteen- to twenty-four years old were enrolled in degree-granting institutions.¹⁵⁴ In 2009, 41.3 percent of all students and 48.6 percent of high school graduates between the ages of eighteen- to twenty-four-years-old were enrolled in degree-granting institutions.¹⁵⁵ Therefore, the education and experiences of this age group has only increased over time. State politicians appear to be reverting to the pre-1970's arguments to justify their attempts to disenfranchise young voters. Given that the framers of the Twenty-Sixth Amendment found these arguments to be null, their resurrection and use in modern politics is unjustifiable and absurd.

Students are also more likely than older citizens and their non-college-educated peers to be politically informed and actively engaged in political issues. A poll conducted shortly before the 2012 presidential election found that college students were less likely than their non-college-educated peers to respond "don't know" to political issues, like national security, demonstrating "a greater political sophistication."¹⁵⁶ In *Worden*, the court observed that students are often "better informed on current issues than other citizens" and have "displayed special awareness in the political sphere, have actively participated in political campaigns, and have kept themselves thoroughly informed through public as well as college news coverage."¹⁵⁷ This interest and awareness was not limited to federal matters, but to state and local issues as well, as students understood that the outcome of local elections could affect them and their rights.¹⁵⁸

152. *See supra* Part II.

153. *See supra* Part II.

154. *Enrollment Rates of 18- to 24-Year-Olds in Degree-Granting Institutions, by Type of Institution and Sex and Race/Ethnicity of Student: 1967 through 2009*, NAT'L CTR. FOR EDUC. STAT. (Apr. 19, 2012), http://nces.ed.gov/programs/digest/d10/tables/dt10_212.asp.

155. *Id.*

156. Neil Gross, *Does College Make You Vote?*, CHRONICLE OF HIGHER EDUC. (Oct. 12, 2012, 9:44 AM), <http://chronicle.com/blogs/conversation/2012/10/31/does-college-make-you-vote/>.

157. *Worden*, 294 A.2d at 241, 244.

158. *Id.*

Historically, there has also been a longstanding connection between colleges and elections. During the Vietnam War and Civil Rights movement, there was a significant amount of political activism on college campuses as students were engaged by, and excited to partake in, the political process.¹⁵⁹ The high level of student engagement explains, at least in part, why presidential and vice-presidential debates are typically hosted by colleges.¹⁶⁰ These locations are also favored because colleges typically “spawn more lectures and discussions” to maximize their investment, which in turn further educates the public on important presidential issues, a main goal of the Commission on Presidential Debates.¹⁶¹ Therefore, students not only have stronger educational backgrounds, but the longstanding connection between elections and colleges means that students also have more access to political and constitutional debates and lectures on relevant electoral issues.

In addition to the lack of permanency and knowledge, state lawmakers seem to believe that college students will unfairly swing a community democratic through “student block voting.”¹⁶² However, studies have shown that this in fact is not the case; instead, voting records of college students “fairly approximate the voting patterns of the national electorate.”¹⁶³ To be fair, the 2012 election between Mitt Romney and Barack Obama did show a greater percentage of students voting democratically, with about sixty percent of eighteen- to twenty-one-year-olds voting for Obama and only thirty-seven percent voting for Romney.¹⁶⁴ However, this skew was also a result of the Democratic Party’s aggressive efforts to register youth voters and the fact that “the Obama camp did a better job of addressing [college students’ and recent graduates’] concerns.”¹⁶⁵ Therefore, it may not be a specific party that attracts students, but instead the party that actually addresses the issues about which they are most concerned.

Overall, state legislators are basing new voter laws on assumptions they have made about the youth population. However, they have failed to do any empirical research into whether these beliefs are actually founded in fact.

159. Fish, *supra* note 4, at 1184–86.

160. Brian Palmer, *So You Want to Host a Debate?: A Mini-Explainer on Why Presidential Debates Are Always on College Campuses*, SLATE (Oct. 23, 2012), http://www.slate.com/articles/news_and_politics/explainer/2012/10/presidential_debate_2012_why_are_debates_always_held_on_college_campuses.html.

161. *Id.*

162. 294 A.2d at 238.

163. *Id.* at 238–39.

164. Elizabeth Flock, *Preliminary Tallies: Without Youth Vote, Obama Would Have Lost Election*, U.S. NEWS & WORLD REP. (Nov. 7, 2012), <http://www.usnews.com/news/blogs/washington-whispers/2012/11/07/preliminary-tallies-without-youth-vote-obama-would-have-lost-election>.

165. *Id.*

The framers of the Twenty-Sixth Amendment initially examined many of the issues that current state legislators fear. The framers found no data to support the notion that young voters have detrimental effects on the political process or that they skew local politics unfairly towards one party or another. If current legislators went back to the congressional record, they would see that many of their fears could be assuaged by statistical evidence to the contrary. Overall, lawmakers are using these unfounded fears to create laws that are contrary to what the Twenty-Sixth Amendment was meant to accomplish. As the court in *Worden* stated, every state in the United States “approved the twenty-sixth amendment and [] did so with full awareness of its history and its implications.”¹⁶⁶

VI. RECOMMENDATIONS

The United States is not without options to combat the attack on student voters. Certainly, a compulsory dual balloting system is an ineffective solution. The Twenty-Sixth Amendment was passed, at least in part, to eradicate the need for a dual balloting system.¹⁶⁷ However, if states want to stop students from voting, then state and federal governments should be responsible for finding a clear solution, rather than employing confusing measures to disenfranchise students. Although there are many options that government officials could explore, the three options outlined below—a volunteer opt-out option, proactive universal registration, and national compulsory voting requirements—are examples of solutions that are either being informally practiced or are in practice in other countries throughout the world.

Due to the recent close elections in 2008 and 2012, states have become extremely sensitive to the issue of who can vote in their state. This is especially true of swing states. The resounding fear expressed by most states is that student voters will overtake the general state population and swing a state democratic. These fears are not totally unfounded. In a 2012 article by the *Chronicle of Higher Education*, one student admitted that she chose to vote in Colorado—the state in which she attended college—over her home state because Colorado was a swing state.¹⁶⁸ The student followed up by stating that she did not “necessarily think that [she] should have been able to do that,” but she opted not to vote for local issues on the ballot because she

166. 294 A.2d at 243.

167. S. REP. NO. 92-26, *supra* note 14, at 15.

168. Sara Lipka, *Defying Expectations, Half of Young Voters Cast Ballots, 60% for Obama*, CHRONICLE OF HIGHER EDUC. (Nov. 7, 2012), <http://chronicle.com/article/Defying-Expectations-Half-of/135620/>.

“felt guilty taking that vote from someone who is actually impacted.”¹⁶⁹ A method like that which has been described by this student may be one option for states to implement. Rather than creating a formal dual balloting system, states could include a memo on the ballot or ask voting officials to inform all voters that they have the option to voluntarily opt out of voting for certain provisions. Students and other “temporary” citizens could choose not to vote for certain items if they did not feel informed about a local issue or candidate. It is not always clear when voting that you have the option to opt-out of certain ballot items. By making this clear, many may take advantage and choose only to vote for federal candidates or on prominent issues that actually affect them. However, the onus is clearly on the students to decide whether they feel sufficiently informed to vote on a candidate or issue.

Another recommendation would be to proactively register all United States citizens, similar to the current electoral model employed in Canada.¹⁷⁰ Every year, Canada’s Chief Electoral writes letters to all individuals who have turned eighteen.¹⁷¹ The letter asks them to confirm that they are indeed eligible to vote and whether they consent to be included on the National Register of Elections.¹⁷² Once registered, students are allowed to vote in either their home or school electoral district, as long as they vote in only one.¹⁷³ If the United States proactively registered all voters, it might increase overall participation in the voting process. Additionally, if students have already registered to vote in one location through this process, they will not end up “fenced out” if they try to register in another and find that they are ineligible. Since the pertinent voter registration details are completed nationally, they would still have the option to vote in their home state.

Alternatively, the Federal Government could implement a compulsory voting requirement. Australia, for example, requires that all citizens vote or pay a twenty-dollar penalty.¹⁷⁴ Although the penalty is not high, the potential loss of twenty dollars may be worth more than not voting and therefore overall voter engagement would increase. In 2012, the Bipartisan Policy Center estimated that approximately 57.5 percent of the total population voted.¹⁷⁵ If overall voter engagement rose, the student population would have less of an impact on the voting results, and the overall vote would more

169. *Id.*

170. Aloï, *supra* note 88, at 298.

171. *Id.* The Chief Electoral receives this information through the Registry of Motor Vehicles.

172. *Id.*

173. *Id.*

174. *Id.* at 299.

175. 2012 Election Turnout Dips Below 2008 and 2004 Levels: Number of Eligible Voters Increases by Eight Million, Five Million Fewer Votes Cast, BIPARTISAN POL’Y CTR. (Nov. 8, 2012), <http://bipartisanpolicy.org/library/report/2012-voter-turnout>.

accurately reflect the political orientation of the country as a whole. Additionally if students were required to vote, then they would be more likely to do proactive research to understand their rights and would not be disenfranchised due to last-minute confusion or ineligibility.

The options outlined above reflect just a few models that have been implemented successfully in other countries. Another option might include defining residency for voting purposes through a federal statute. However, this would most likely meet the same opposition as the Voting Rights Act. Alternatively, the federal government could implement policies to create uniformity across states, much like the Uniform Commercial Code for Sales. Others have suggested creating a special presidential ballot, on which the only candidate was the President.¹⁷⁶ The problem, again, would be the issue of the administrative oversight necessary to manage this dual balloting system, as well as the fact that other non-temporary citizens may choose to vote only for the president and national voter engagement may fall to the levels seen during interim elections.

Overall, the framework of the Electoral College makes establishing rights for student voters difficult. Since votes are allocated based on the popular vote in each state, constituents do not want student voters to vote in any way within their state. A vote that was instead based on a nationalized popular vote would eradicate this issue for the Presidential election, though undoubtedly problems would still remain for federal legislator elections. At this time, there appears to be no easy and cheap solution to address both student concerns and the concerns of states and their full-time, permanent citizens. Hopefully, as the voting process moves forward and takes advantage of technological systems, better methods of voting may be implemented. If not, then at least the education and information regarding voting rights should be more clearly expressed. That way, all citizens will be fully aware of their rights and have a fair opportunity to exercise their right to vote.

CONCLUSION

As recent rulings in courts across the country have made clear, states have relatively broad latitude to limit the rights of student voters. States can pass laws that require registrants to prove a “sufficient physical presence” in their new domicile—in other words, that their presence is more than just temporary.¹⁷⁷ States can also require registrants to have the “present intent to

176. David J. Canupp, *College Student Voting: A New Prescription for an Old Ailment*, 56 SYRACUSE L. REV. 145, 148 (2005).

177. *Id.* at 151–52.

make one's principal home in the new jurisdiction" and to have "abandoned their previous domicile."¹⁷⁸

There are some restrictions, however, that states cannot place on student voters. First, states cannot treat student voters "any differently than any other class of voters[,] nor can they have more stringent criteria for student voter applicants."¹⁷⁹ Second, states may not impose any durational residency requirements. That is, states cannot require that registrants be residents of the state or locality for a specific time period in order to be qualified to vote.¹⁸⁰ Finally, students cannot be denied the right to vote in their college town "so long as they actually live there, are interested in and are concerned with their college communities, and assert in good faith their purpose of voting there and no place else."¹⁸¹ However, even with countless rulings surrounding student voting laws, it is unclear what rules are acceptable and states continue to push the boundaries.

As one scholar has observed, "Students were granted voting rights over thirty years ago and have been fighting ever since to exercise them consistently."¹⁸² That is not to say that students should be able to vote wherever they please. All other citizens are required to vote in their state of residence and students should be held to this same standard. The future of a college student is often unknown, but many do not intend to return to their family home upon graduation.¹⁸³ Therefore, students should have the right to vote where they feel most invested, even if this is their college community.¹⁸⁴

The right to vote and participate in the political process has long been recognized as integral to citizenship. As the Supreme Court stated in *Yick Wo v. Hopkins*,¹⁸⁵ "the political franchise of voting" is a "fundamental political right because [it is] preservative of all rights."¹⁸⁶ Later, in *Reynolds v. Sims*,¹⁸⁷ the Court observed that, "undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society."¹⁸⁸ There is a strong belief that "until a person had the right to vote, she was not a citizen or

178. *Id.*

179. *Symm*, 439 U.S. at 1107, 1111 (holding that states cannot treat students differently from other voters and must treat dorms as acceptable residences).

180. *Dunn v. Bloomstein*, 405 U.S. 330, 354 (1972).

181. *Worden*, 294 A.2d at 244.

182. Canupp, *supra* note 176, at 148.

183. *See Bright*, 336 F. Supp. at 533 (finding that the presumption that all students retain a desire to return to their previous homes following the termination or completion of their college careers is not valid).

184. *Worden*, 294 A.2d at 239.

185. 118 U.S. 356 (1886).

186. *Id.* at 370.

187. 377 U.S. 533 (1964).

188. *Id.* at 561–62.

member of the political community.”¹⁸⁹ Since voting is an integral component of the democratic experience and of United States citizenship, “this right should not be more difficult to exercise for college students.”¹⁹⁰

Despite the challenging laws that are now in place, students are still persistently exercising their right to vote. Due to the large number of voter suppression laws, turnout among the youth voting population in the 2012 election was “expected to be lower than it was four years before.”¹⁹¹ However, fifty percent of eligible eighteen- to twenty-nine-year-olds voted, which was higher than voter turnout in 2008.¹⁹² As noted above, only around fifty-eight percent of all eligible U.S. citizens voted in the 2012 election.¹⁹³ Despite the amount of press and attention that the elections garnered, barely a majority of people chose to vote. As the Director of the Center for the Study of the American Electorate remarked, “[d]emocracy is in trouble” because people have lost “trust in the government.”¹⁹⁴

Luckily some politicians are listening and responding to outrage over restrictive voting laws. New Hampshire, which had changed its voting laws to require anyone registering to vote to obtain a New Hampshire driver’s license and change their vehicle registration to the state within sixty days, has recently taken steps to eradicate these restrictions. For example, the New Hampshire House recently voted to “remov[e] references to motor vehicle laws from voter registration forms.”¹⁹⁵ House Bill 119 “would change the law to make it clear [that] a person does not need to have a New Hampshire driver’s license or have registered a car in the state in order to vote.”¹⁹⁶ Representative Gary Richardson, who acknowledged that the law’s intent was “to prevent college students from voting,” stated after the vote that, “You don’t give up your right to vote because you don’t register your car.”¹⁹⁷

189. Sarabyn, *supra* note 7, at 52.

190. Aloï, *supra* note 88, at 304.

191. Ann Schnobelen, *Students Preserved Rights in Last Presidential Election Cycle, Report Says*, CHRONICLE OF HIGHER EDUC. (Mar. 22, 2013), <http://chronicle.com/article/Students-Preserved-Voting/138099/>.

192. *Id.*

193. 2012 General Election Turnout Rates, U.S. ELECTIONS PROJECT (July 22, 2013), http://elections.gmu.edu/Turnout_2012G.html.

194. Thomas Hargrove, *Presidential Election 2012: Millions of Americans Chose Not to Support the Electoral Process*, ABC ACTION NEWS (Nov. 9, 2012, 12:49 PM), <http://www.abcactionnews.com/dpp/news/political/presidential-election-2012-millions-of-americans-chose-not-to-support-the-electoral-process>.

195. Garry Rayno, *NH House Approves Changes to Voter Registration Forms*, UNION LEADER (Mar. 13, 2013, 10:49 PM), <http://www.unionleader.com/article/20130314/NEWS06/130319498>.

196. *Id.*

197. *Id.*

Richardson, along with other state legislators, realized the inherent confusion in the law and decided to remain more inclusive.¹⁹⁸

New Hampshire is not the only state to recognize and protect student voting rights. As the Attorney General of Massachusetts said, "To restrict the 18-year-old's right to choose his residence for voting purposes, a right possessed by voters over 21 years of age, would be to 'abridge' his right to vote 'on account of age' in contravention to the 26th amendment."¹⁹⁹ These attitudes more accurately reflect the intent of the Twenty-Sixth Amendment. In fact, one member of the Senate, Senator Cranston, wanted to pass a law that would prevent any state from restricting students from voting in their college towns.²⁰⁰ He believed that laws of this kind would violate the abridgement clauses of the Twenty-Sixth and Fourteenth Amendments.²⁰¹ Unfortunately, he was not able to gain enough support for this proposed law.²⁰²

As the youth activist climate becomes stronger, and the desire to be heard grows, perhaps the problems plaguing students in the past will not be as relevant in the future. There is a greater exchange of information and more transparency in the process than ever before, with universities often taking the lead to inform their college students of their rights on websites like Rock the Vote,²⁰³ which are aimed at helping the youth population exercise their right to vote. In time, hopefully more states will return to the intent of the Twenty-Sixth Amendment and see students for what they can add to the democratic process, rather than how it may impact the political orientation of the state.

198. *Id.*

199. Fish, *supra* note 4, at 1209.

200. *Id.*

201. *Id.*

202. *Id.* at 1210.

203. See ROCK THE VOTE, <http://www.rockthevote.org/> (last visited Mar. 30, 2014).